allowed by law and passes to the male issue of the residuary legatees and that the assignees of Wan Boon Chwee and Wan Boon Lim have at this stage no interest therein.

I have not dealt at any length with Mr. Eber's argument that the gift of income is an indefinite gift of income and therefore attracts the corpus. First of all such a conclusion would defeat the clear intention of the testator that the residuary legatees should not have more than a life interest in their shares of income, and secondly such an interest is not indefinite and the submission has therefore no solid foundation.

Order accordingly.

Solicitors for the Plaintiffs—*Johannes & Sammy.*

Solicitors for the Defendants—*Chan & Eber.*

Solicitors for Mr. Lim Koon Teck—*Zehnder Bros.*

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

May 18, 1937.

IN THE MATTER OF THE TRUSTS OF THE WILL OF LOOK YAN KIT DECEASED. LOOK CHAN WAI & ANOR. vs. LOOK CHAN TOCK & ORS.,

[SINGAPORE ORIGINATING SUMMONS No. 39 of 1937.]

Will—construction—residuary estate—vesting—contingent interests—gift of monthly allowances—forfeiture clause—applicability of.

A testator by his Will gave to certain named persons monthly allowances which were payable out of his residuary estate for a period of twenty years from his death; the gift was a vested gift subject to being divested. The Will provided that no share of any person deriving any share benefit or interest thereunder should be deemed to have become vested in such person unless such person should be living at the expiration of the said period of twenty years. The will further declared that "in case any person to whom a share in my residuary estate is hereinbefore given shall at any time before the same become absolutely vested in such person alienate or charge the same or the income thereof or of any part thereof .....then the trust hereinbefore contained in favour of such person as aforesaid shall immediately thereupon cease and determine and my said will shall be read and construed and take effect in all respects as though such person had died on the day preceding the date of distribution."

Held, on the true construction of the Will, that the word "income" in the forfeiture clause above set out means the income of the share of the residue and that in so far as they are payments in the nature of annuities for a fixed term of twenty years the monthly allowances are not subject to forfeiture.

Held, further that in so far as the restraint clause will operate on an expectant share of the residuary estate, there is an effective gift over.

ORIGINATING SUMMONS.

The Summons was issued by certain beneficiaries under the Will of the testator. By it they propounded certain questions under the Will for determination by the Court.

The Will of the testator was dated the 30th December, 1926. He died on the 11th July, 1931 and his will was proved on the 27th July, 1931.

The provisions of the will material to this report and the questions raised for determination by the Originating Summons are set forth in the judgment of Horne, J.

Smith for Plaintiffs

Page for Defendants.

Cur. Ad. Vult.

HORNE, J.—The question raised on this Originating Summons is whether or not the provisions for forfeiture contained in paragraph 18 of the will would become applicable and if so to what extent in the event of the plaintiffs mortgaging or attempting to mortgage

(a) the plaintiffs' share of income;

(b) the plaintiffs' share in the residuary estate.

The question does not appear to me to be very accurately put, for it cannot be said strictly that the plaintiffs have a share of income. The word "share" is only used with reference to the residuary estate. The accurate description under (a) appears to me to be "monthly allowance." These monthly allowances are given by clause 7 of the will and are, by that clause, expressed to be payable until the date of distribution, i.e. twenty years from the death of the testator. Consequently they may be described as payments in the nature of annuities for the term of 20 years. But having regard to clause 8, the gift which under clause 7 is a vested gift, is subject to being divested. Again by clause 9 the amount may be increased.

Clause 15 is in the following terms:—"I declare that no share of any person deriving any share benefit or interest under this my will shall be deemed to have become vested in such person unless such person shall be living at the expiration of the said period of twenty years." This clause cannot, in my opinion, have any effect upon the gifts of monthly allowances. It relates so far as it has any effect at all solely to persons who are entitled to a "share" under clause 11 or who may become entitled under clauses 12, 13 and 14.

The restraint clause, clause 18, declares "that in case any person to whom a share in my residuary estate is hereinbefore given shall at any time before the same become absolutely vested in such person alienate or charge or attempt to alienate or charge the same or the income thereof or of any part thereof.....then the trust hereinbefore contained in favour of such person as aforesaid shall immediately thereupon cease and determine and my said will shall be read and construed and take effect in all respects as though such person had died on the day preceding the date of distribution."

It seems to me quite clear that this clause also has no relation whatever to the monthly allowances. The word "income" in clause 18 means the income of the share and has no connection with the monthly allowances which are charged upon or payable out of the income of the whole estate for a period of twenty years before the shares are ascertained. The monthly allowances are therefore not subject to the restraint clause.

With regard to the shares, the matter is different and perhaps more difficult. It appears evident that, although provision is made for partition as a method of division into shares, the estate will almost certainly be converted into money in order to carry out that division in its entirety. Consequently I think the shares must be regarded as gifts of personal estate. The trustees are, as soon as may be after the date of distribution, to make certain payments, and thereafter upon trust to divide the whole of the residuary estate, either by sale and realisation or partition or both, into twenty-six equal shares and to appropriate, give, transfer or pay certain shares to named persons. There appears to be no gift except in this direction to pay. If the clause stood alone the named persons would have no transmissible interest unless they survived the testator by the twenty years. *Re Eve*: *Belton* v. *Thompson*, 93 L.T. 235. The subsequent clauses 12-14 are not in conflict with clause 11 but are attempts to provide that there shall be some person ready to take when the period expires. Then to make his intention abundantly clear the testator declares, somewhat unnecessarily in my opinion, by clause 15 that no share of any person deriving any share, benefit or interest under the will shall be deemed to have become vested in such person unless such person shall be living at the expiration of the said period of twenty years. Apart then from the view I take that the time is annexed to the substance of the gift and that, as a consequence, the gift is contingent upon the donee surviving, this clause would also make the gift of a share a contingent one. Everything really depends on the expiration of the twenty years.

The argument based on the use of the expression "shall be deemed" in clause 15, which argument is derived from the use of that expression in statutes, is not, I think, applicable in the case of a will. When the expression is used in a statute the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to: *Beal*, 3rd Ed. 342, citing *Ex parte Walton*, (1881) 17 Ch.D. 746 at p.756.

But even applying such a rule of construction, I am driven to the same conclusion. The testator enacts, so to speak, that interests which might be regarded as vested interests, are to be deemed not to be vested. The purpose and the persons affected are sufficiently indicated and effect has to be given to his expressed intention.

It has also been submitted that the words "the trust hereinbefore contained in favour of such person as aforesaid shall immediately thereupon cease and determine and my said will shall be read and construed in all respects as though such person had died on the day preceding the date of distribution," which form the concluding passage of clause 18, do not make a valid gift over. I think, however, most of the argument on that submission was directed upon the assumption of the restraint clause applying to the gifts of income, and, as I have held that the clause does not so apply very little remains to be said upon that submission. In so far as the restraint will operate upon an attempted disposition of an expectant share of residue, it appears to me, having regard to clause 12, that there is an effective gift over.

As far then as the monthly allowances are concerned, the restraint clause is inapplicable as far as the plaintiffs' shares, the restraint clause would operate upon an attempt to alienate to the extent that the plaintiffs would lose their expectant shares.

Order accordingly.

Solicitors for the Plaintiffs—*Donaldson & Burkinshaw.*

Solicitors for the Defendants—*Allen & Gledhill.*

[APPELLATE CRIMINAL JURISDICTION.]
HORNE, J.
May 22, 1937.

LAM HENG v. REX

[SINGAPORE MAGISTRATE'S APPEAL No. 25 of 1937]

Criminal procedure—summary trials—right of Counsel for defence to address the Court—Criminal Procedure Code (Cap. 21) Ss. 5, 182 (j), 184.

In summary trials the only address to the Court to which an accused or his advocate is entitled as of right may be made at the opening of the case for the defence. Counsel may at this stage submit that there is no case to answer in law. Such an address may by leave of the Court be postponed, as when witnesses are to be called, until the conclusion thereof. Where, however, an accused is the sole witness as to facts and at the conclusion of the prosecution's case elects to give evidence, such an address is of necessity postponed until after he has given his evidence.

MAGISTRATE'S APPEAL.

T. W. Ong for the appellant.

Storr, Crown Counsel, for the respondent.

Cur. Ad. Vult.

HORNE, J.—This is an appeal against conviction and sentence of 3 months R.I. and 6 months police supervision, and whatever may be said about the conviction, the Magistrate ought, in my opinion, to have passed a lesser sentence against the appellant in view of the fact that there was no previous conviction against him. In any event there was no jurisdiction to make